

New York Times
July 11, 2000

New Look at Realities of Divorce

By JOHN TIERNEY

WHICH sex is mostly to blame for divorce? The answer seems obvious every time a mogul like Donald Trump or Ronald Perelman or Rupert Murdoch dumps his wife.

Conservative preachers and liberal feminists are united in their disdain for philandering men who abandon their children. Journalists (including this one) and politicians of all persuasions have righteously condemned "deadbeat dads." Even Hollywood professes to be appalled at the cads depicted in "The First Wives Club."

But, there's a problem with the conventional wisdom. Across America, at least two-thirds of divorce suits are filed by women. Researchers who have interviewed divorcing couples have repeatedly found that, in cases where the divorce is not mutually desired, women are more than twice as likely to be the ones who want out. After the split, women are typically happier than their exes.

This trend has inspired what is probably the first paper in the *American Journal of Law and Economics* ever to be named after a Nancy Sinatra song. In "These Boots Are Made for Walking: Why Most Divorce Filers Are Women," Margaret F. Brinig and Douglas Allen, both economists, analyze all 46,000 divorces filed in one year, 1995, in four different states: Connecticut, Virginia, Montana, and Oregon.

They looked for different reasons that would prompt a woman to file for divorce. One would be to escape an abusive husband—like a man who is adulterous or violent. But in the state with the best records of grievances, Virginia, only 6 percent of divorces were granted on grounds of violence, and husbands were cited for adultery only slightly more often than wives.

"Some women file for divorce because they're exploited in really bad marriages," said Dr. Brinig, a professor of law at the University of Iowa. "But it seems to be a relatively small number, probably less than 20 percent of the cases."

Another impetus to divorce is the belief that your partner is no longer good enough for you. The classic example is the guy who takes a trophy wife after dumping the high-school sweetheart who sacrificed her own potential to put him through medical school, but a woman can be similarly tempted to leave a husband who is less successful than she is.

The researchers found that the better-educated partner, male or female, was indeed more likely to file for divorce. But again these types of divorces seemed to represent less than 20 percent of the cases.

The solution to the mystery, the factor that determined most cases, turned out to be the question of child custody. **Women are much more willing to split up because—unlike men—they typically do not fear losing custody of the children. Instead, a divorce often enables them to gain control over the children.**

"The question of custody absolutely swamps all the other variables," Dr. Brinig said. "Children are the most important asset in a marriage, and the partner who expects to get sole custody is by far the most likely to file for divorce."

The correlation with custody is so strong, Dr. Brinig said, that she has changed her view about the best way to preserve marriages and protect children. She previously advocated an end to quick no-fault divorces, but she now believes that the key is to rewrite custody laws.

In most states, including New York, New Jersey, and Connecticut, mothers can fight for and usually win sole custody. But some states have recently begun making joint custody the presumptive norm.

That change in the law seems to be keeping more couples together, according to this study and other work by Dr. Brinig. She and colleagues have noted a decline in divorce in states with joint-custody laws. And when couples do divorce, fathers who share custody are less likely to renege on their child-support payments.

Dr. Brinig favors a law like the one recently enacted in West Virginia, which typically awards each parent a share of custody according to how much time that parent spent with the child during the marriage. Besides eliminating some of the vicious court fights that now take place over custody, she said, such a law could lead to fewer divorces.

"Custody is now a way—in some marriages the only way—for women to achieve a real show of force over men," Dr. Brinig said. "If you remove that distortion, it's apt to change the way men and women relate to each other and to their kids. Fathers are likely to spend more time with kids if they can expect to still see them if the marriage doesn't work out. Women will be more likely to see men as parenting partners, and less likely to use divorce as a power play."